

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

— — —

IN RE: AUTOMOTIVE WIRE HARNESS
SYSTEMS ANTITRUST

MDL NO. 2311

STATUS CONFERENCE / MOTION HEARING

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, June 5, 2019

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1 Detroit, Michigan

2 Wednesday, June 5th, 2019

3 at about 10:01 a.m.

4 — — —

5 (Court and Counsel present.)

6 THE CASE MANAGER: Please rise.

7 The United States District Court for the Eastern
8 District of Michigan is now in session. The Honorable
9 Marianne O. Battani presiding.

10 Please be seated.

11 All persons having business therein, draw near,
12 give attention, you shall be heard.

13 God save these United States and this Honorable
14 Court.

15 You may be seated.

16 The Court calls Case No. 12-md-02311, In
17 Re: Automotive Parts Antitrust Litigation.

18 THE COURT: Good morning, everybody.

19 THE ATTORNEYS: (Collectively) Good morning.

20 THE COURT: We have a relatively short agenda
21 today, so we will try to proceed as quickly as we can.

22 Mr. Esshaki is not here today. Evidently there
23 hasn't been much for him to do recently, so he really has no
24 report to add. /so I told him he didn't have to be here.

25 Is there anybody who has any questions for the

1 Master or any problems, situations?

2 (No response.)

3 THE COURT: No. Okay. Status report, the direct
4 purchasers' status. Let's talk about A.

5 MR. HANSEL: Good morning, Your Honor.

6 Greg Hansel, for the direct purchasers. May it please the
7 Court.

8 I have two things I wanted to say this morning.

9 THE COURT: Okay.

10 MR. HANSEL: First is a quick update on the
11 settlement status from a big picture point of view from the
12 direct purchasers, and, second, I wanted to ask the Court
13 about scheduling some final approval hearings in four parts.

14 THE COURT: Okay.

15 MR. HANSEL: So on the first one, I am pleased to
16 report that the direct purchasers have been working very hard
17 to resolve these cases. Since the last status conference, on
18 September 26th of last year, we have reached 33 new
19 settlements, defining a settlement as a settlement with one
20 defendant in one part, so 33 new settlements. We have filed
21 complaints in 24 parts, and we have completely settled 11 of
22 those parts, at least in principle, with some settlement
23 agreements remaining to be signed. Out of the 24 cases, 22
24 have at least one settling defendant, and 9 out of the 24
25 have only one defendant remaining. We have now settled with

1 27 families of defendants total.

2 So we find those statistics to be encouraging, and
3 we are going to keep at it with an eye to resolving
4 everything. As the Court is aware, some matters remain in
5 litigation and we are litigating those.

6 THE COURT: Okay.

7 MR. HANSEL: So as far as --

8 THE COURT: What is the status -- while we are
9 talking about this -- of the arbitration in the spark plugs
10 case?

11 MR. HANSEL: No arbitrations have been filed by
12 anyone.

13 THE COURT: Okay. Interesting. So what's going on
14 then? There's what, Bosch, NTK and NGK I think?

15 MR. HANSEL: Yes, that's correct. Well, there is
16 not currently pending a case against Bosch, against
17 Robert Bosch in spark plugs or oxygen sensors, but there are
18 cases pending against NGK and NTK in both of those parts.
19 Those two companies are affiliated.

20 THE COURT: Okay.

21 MR. HANSEL: And we are also engaging with the
22 mediators in connection with those.

23 THE COURT: And Bosch was dismissed from the oxygen
24 sensors; do you know that?

25 MR. HANSEL: I believe that's right, yes, yes.

1 THE COURT: Okay. And the other one I wanted to
2 check on was the exhaust system, Bosal, and what's going on
3 with --

4 MR. HANSEL: So Bosal, after the Court's recent
5 order denying the direct purchasers' motion for
6 reconsideration of the dismissal of Boysen, Bosal is the only
7 remaining non-settling defendant in the direct purchasers'
8 exhaust system cases. We are still, you know, litigating
9 against Bosal, but we are also engaging the mediators with
10 respect to Bosal.

11 THE COURT: Is there a mediation scheduled?

12 MR. HANSEL: Umm --

13 THE COURT: I didn't see one on the --

14 MR. KANNER: Good morning, Your Honor.
15 Steve Kanner.

16 Most recently, in fact, today I heard from the
17 mediator who has indicated that a conference call has been
18 scheduled.

19 THE COURT: A conference call.

20 MR. KANNER: I don't know where that call will lead
21 us, but there is some progress in terms of moving.

22 THE COURT: We are really looking for progress. We
23 look at the conference call as the be-all, end-all. When is
24 that scheduled for, do you have any idea?

25 MR. KANNER: Well, this afternoon, the conference

1 call.

2 THE COURT: Okay.

3 MR. KANNER: If there is going to be a meeting, I
4 suspect that will be derived from the conference call.

5 THE COURT: All right. I guess I want to know if
6 it is not going to progress to a resolution. Then we need to
7 move forward and take the next steps in these cases, so
8 that's what I'm starting to look at to push -- not to force
9 anybody to settle, but if you are not settling, then I want
10 to move forward.

11 MR. HANSEL: So do we.

12 THE COURT: So whatever we need, we need to do it.

13 MR. KANNER: I understand, Your Honor. And I
14 believe the mediator will report to you at the conclusion of
15 the current set of activities.

16 THE COURT: Right. Okay. Thank you.

17 Mr. Hansel, you may continue, if you have anything
18 else?

19 MR. HANSEL: Yes. Thank you. So we would like to
20 ask the Court today to schedule a final approval hearing in
21 four parts, and we have some proposed dates.

22 THE COURT: Okay.

23 MR. HANSEL: The four parts are alternators,
24 starters, fuel injection systems, and radiators. There are
25 multiple settlements in each of those parts. If -- and we

1 have some suggested dates --

2 THE COURT: Let me pull up the calendar.

3 MR. HANSEL: -- that would work for the direct
4 purchasers, and also avoid the Jewish holidays.

5 THE COURT: All right.

6 MR. HANSEL: So the dates are in October.

7 October 2nd -- you want me to wait for your response before
8 going to the next one?

9 THE COURT: Okay. October 2nd, I've got it. Okay.

10 MR. HANSEL: October 3rd.

11 THE COURT: I think October 2nd, just to tell you,
12 I was looking at that for our next conference date, so it may
13 work out very well to do it the same day.

14 MR. HANSEL: Good idea.

15 THE COURT: Would you like that?

16 MR. HANSEL: Sure.

17 THE COURT: Why don't we put it October 7th then --
18 2nd. Is that for all four?

19 MR. HANSEL: Yes. So what we suggest respectfully,
20 Your Honor, that today we can submit by ECF utility the
21 proposed order on the notice motions that are pending for
22 those four parts, and the order will contain the October 2nd
23 date. That's what we were waiting for was to get that date
24 set.

25 THE COURT: Right.

1 MR. HANSEL: Now that that is set for October 2nd,
2 the Fink Bressack law firm will submit by ECF utility today
3 proposed orders granting the notice motions in those four
4 parts for the direct purchasers, and setting October 2nd as
5 the date for the fairness hearing.

6 THE COURT: All right. Sounds good to me.

7 MR. HANSEL: Great. That's all I have, Your Honor.
8 Thank you.

9 THE COURT: Thank you. Good morning.

10 MS. SALZMAN: Good morning, Your Honor. Just with
11 regard to October 2nd as a potential date for the status
12 conference, I just want to bring to the Court's attention
13 that traveling the day before, it is the second day of
14 Rosh Hashanah, and whether that impacts people coming in for
15 the hearing. Maybe the hearing could be the following day on
16 October 3rd so people don't have to travel on that date if
17 they observe the holiday.

18 THE COURT: Okay.

19 MS. SALZMAN: Sorry to throw a wrench into that.

20 THE COURT: No. I'm glad you did. That's why we
21 suggest these dates at trial (sic). Let's look at the next
22 Wednesday, that would be the 9th.

23 MS. SALZMAN: That's Yom Kippur I'm told from my
24 backup group.

25 THE COURT: You enjoy the longest holiday.

1 MR. HANSEL: The other dates we had looked at were
2 the afternoon on the 10th or anytime on the 11th.

3 MS. SALZMAN: Or the 3rd, if that works.

4 THE COURT: We can do October 3rd for the fairness
5 hearing and the status conference. Let me just check. It is
6 a Thursday, so it is a little off of our regular date, but I
7 don't see any conflict with that. Okay. Molly, do you see
8 any conflict in that date, the 3rd?

9 THE CASE MANAGER: We have sentencings.

10 THE COURT: We can change that. We have a jury
11 trial too, and we will change that.

12 MR. HANSEL: So October 3rd?

13 THE COURT: October 3rd it is.

14 MR. HANSEL: So would the status be at 10:00? And
15 what time would Your Honor like to set the approval hearing?

16 THE COURT: We will do it right after that. I
17 would say for your notice to put it at 11:00, because I don't
18 know what else is going to be on, but if we don't have
19 motions, many, like today, it would be very short.

20 MS. SALZMAN: Hollis Salzman, for the end payors.
21 Sorry for not introducing myself earlier.

22 Your Honor, we are happy to tell the Court we have
23 settled with all of the defendants except for one, and that
24 is Bosal. We have other settlements that we are unable to
25 disclose at this time because we have agreements in

1 principle, but we are still negotiating the terms of those
2 settlements, but we hope to have those to Your Honor shortly.

3 We have one pending approval motion with Sanoh in
4 the steel tubes case, and that's pending before Your Honor.
5 So that is the only motion in the end payors' case that
6 requires your attention. And then hopefully we will get the
7 other settlements wrapped up, and get you preliminary
8 approval papers on those settlements.

9 THE COURT: Do I have that steel tubes?

10 MS. SALZMAN: If not, we can resubmit it, but I
11 believe it has been filed.

12 THE COURT: If it has been submitted, I have it. I
13 just haven't had it come across my desk yet. So that's all
14 defendants?

15 MS. SALZMAN: Except for one.

16 THE COURT: Except for Bosal.

17 MS. SALZMAN: And that's in the exhaust systems
18 case. We had one failed mediation with Bosal.

19 THE COURT: Right.

20 MS. SALZMAN: We continue to have discussions with
21 them. I too have spoken to Mr. Poza, the mediator, and we
22 are still working to that end. However, we also -- given
23 that we have uncertainty as to whether or not we can settle
24 with that defendant, we have scheduled the meet and confer on
25 discovery for early next week, and we will be moving forward

1 with the case if we can't reach a resolution with them. That
2 will probably be done in tandem.

3 THE COURT: Is Bosal, in terms of settlement,
4 wanting to do the direct and the indirects in one?

5 MS. SALZMAN: Maybe that's a better question for
6 them. I don't know.

7 THE COURT: I mean, is that what's holding up --

8 MR. HANSEL: Your Honor, as with the end payors,
9 the direct purchasers have already had one failed mediation
10 with Bosal. And Rocky Posa is the mediator, he's still
11 engaged. I guess we are a little more optimistic that there
12 might be a resolution that's possible, but we agree that if
13 we can't resolve it, we do want to move forward with the
14 litigation.

15 THE COURT: And Mr. Posa is doing both of the
16 mediations?

17 MS. SALZMAN: Yes. And I don't want to steal
18 Mr. Barrett's thunder, but he has a report on Bosal that he
19 can give himself.

20 THE COURT: All right. Thank you very much,
21 Ms. Salzman.

22 MR. BARRETT: Good morning.

23 THE COURT: Mr. Barrett, go ahead.

24 MR. BARRETT: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MR. BARRETT: Your Honor, the auto dealers are
2 pleased to announce that we have settled with everybody
3 including Bosal.

4 THE COURT: Okay.

5 MR. BARRETT: And we have -- it's been over eight
6 years. We filed these cases --

7 THE COURT: Can we have a round of applause? We
8 have one group that's all done.

9 MR. BARRETT: I was a young man when we filed these
10 cases.

11 Today we will be filing a motion for approval of
12 the round-three allocation plan. We've got about four
13 preliminary approval motions yet to file. We will file those
14 this month. And we will -- and we will be seeking a final
15 approval date from Your Honor sometime this year. We can do
16 it in this calendar year, and we intend to hope to do that.

17 THE COURT: Good.

18 MR. BARRETT: We thank the Court for its many
19 courtesies over the years.

20 THE COURT: Wonderful. The first group in eight
21 years. Okay. When I started this, I was naive enough to
22 think in a couple years we will get this resolved.

23 MR. SHOTZBERGER: Good morning, Your Honor.
24 William Shotzberger on behalf of the truck and equipment
25 dealer plaintiffs.

1 THE COURT: Okay.

2 MR. SHOTZBERGER: I have no new settlements to
3 report because we also are settled with all active defendants
4 in our cases. On our to-do list we still need to file a
5 motion for preliminary approval of our settlement with the
6 trustee for TK Holdings, that's Takata American entity, and
7 we are going to file that motion in two weeks along with a
8 motion for approval of a plan of distribution for all
9 settlements -- all parts where a plan is not yet in place.

10 THE COURT: When do you think you are going to do
11 the distribution in the trucks?

12 MR. SHOTZBERGER: I believe we anticipate filing
13 our motion within two weeks, so I would expect, depending on
14 when that is ruled upon, I would think probably late this
15 year.

16 THE COURT: Okay. Thank you.

17 MR. SHOTZBERGER: Thank you.

18 THE COURT: All right. Status of scheduling
19 orders. Is anybody speaking to that? I don't know who put
20 that on? Is there any problem with scheduling orders? Let
21 me ask you that.

22 MR. SPECTOR: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MR. SPECTOR: Eugene Spector, on behalf of the
25 direct purchasers.

1 The only scheduling order we had, we submitted last
2 night on ECF, and I have copies here if you would like. It
3 is a stipulated order on the class -- the revised class
4 certification briefing schedule in the bearings case, and so
5 that's now set for your approval.

6 And with regard to the Dalc case, which is the
7 remaining case, we are in discussions with defendants, trying
8 to figure out the best way to streamline the bearings cases
9 so that they hopefully move in coordination and get resolved
10 at the same time.

11 THE COURT: I'm trying to remember the telephone
12 conference we had on that. Was there some discovery --

13 MR. SPECTOR: Yes.

14 THE COURT: Is this you too or is that just the
15 scheduling?

16 MR. SPECTOR: That's all part of the discussions.
17 There is some discovery that we are still owed. We are
18 trying to get that part of it resolved without having to come
19 to the Court again. There was already a motion to compel
20 that was granted. If we can get those things -- I think we
21 can get those things resolved, but that's what we are working
22 on in discussions.

23 THE COURT: Okay. Good. Thank you.

24 MR. LANGHAM: Chanler Langham for the end payors.

25 As you heard, Your Honor, Bosal is the last

1 remaining non-settling defendant with the end payors. We
2 sent them a discovery plan with a fairly aggressive schedule
3 because they are the last defendant. They declined to meet
4 with us in person today while we are all here, but they have
5 now told us that we will discuss the scheduling plan on
6 Tuesday of next week. That's our report. Thank you.

7 THE COURT: You are going to meet in person or are
8 you going to do it by telephone?

9 MR. LANGHAM: It sounds like we will be doing it on
10 the telephone because they didn't want to meet in person.

11 THE COURT: They don't want to look at you? What's
12 going on?

13 MR. LANGHAM: I don't know. They said they were
14 busy traveling for this hearing and could not meet. But
15 if -- if Your Honor thinks it would be more efficient, like I
16 do, to actually meet in person while we are all here, I'm
17 sure you might be able to convince them to do so.

18 THE COURT: Are they all here? Just a minute. Who
19 else is here?

20 MR. MOUW: Gary Mouw on behalf of Bosal.

21 My partner is traveling and was unable to meet
22 today in person. I'm happy to have a conversation, but we
23 just received it late last week, the request, and we
24 explained that we needed to confer with our client about it,
25 and we were able to schedule a time to have a telephone

1 conference to go through this proposed scheduling order early
2 next week.

3 I'm happy to start the conversations today, but
4 given the -- my partner's absence and our chance to speak
5 with our clients about it, we found the earliest convenient
6 time to do it, and that's Tuesday of next week.

7 THE COURT: Okay. I guess it will be Tuesday of
8 next week though you could have a little chat here and --

9 MR. MOUW: Happy to, of course. And as for the
10 discussions as for the settlement, since there was a lot of
11 discussion as to Bosal, as Mr. Barrett noted, we did settle
12 with the auto dealers, and have been in conversations with
13 both the end payors and direct purchasers. We are providing
14 the end payors information as to our position. They
15 requested follow-up for the supporting information, we
16 provided that. So we have been certainly participating in
17 good faith and laid out our position quite clearly as to
18 where we are in settlement, and reasonable minds obviously
19 prevailed with Mr. Barrett and we were able to secure a
20 settlement there. And we are willing to -- we will have
21 continuing conversations with both the directs and end payors
22 in the short run.

23 THE COURT: I think I would like to keep better
24 contact with you on what's going on with Bosal. I would like
25 to know, you know, if -- I trust your settlement mediations

1 will go on with -- your conversations with Mr. Posa will go
2 on, but I like to see the schedule, I like to see that it is
3 moving along so that if this does not resolve, we don't have
4 another eight years for you to get to trial.

5 MR. MOUW: Certainly.

6 THE COURT: So you have to know that we are going
7 to push this along. I would like a report back. You are
8 going to meet on Tuesday, and that would be to set up the
9 schedule; is that right?

10 MR. MOUW: Yes, that's the purpose.

11 THE COURT: What I would like you to do is to send
12 to me after Tuesday, if you have it finalized, send me a
13 little e-mail -- just send off an e-mail or something that
14 you have worked it out. If you have not worked it out, then
15 I want to see you. I want you to come in here, and I will
16 set a date when I hear from you. I'm going to assume that
17 you can work it out, but just in case.

18 And I want you to understand, I'm not trying to say
19 you have to settle, I'm saying you have to move this case
20 along.

21 MR. MOUW: Yes.

22 THE COURT: I will do whatever I can, and you can
23 let me know what I can do, to push this a little faster.

24 MR. MOUW: All right.

25 MR. LANGHAM: Absolutely. Thank you, Your Honor.

1 THE COURT: Okay. Before we do the date for the
2 next conference -- well, I think we did it. It is going to
3 be October 9th.

4 MR. SPECTOR: Excuse me? The 3rd, Your Honor.

5 THE COURT: October 3rd. Thank you. October 3rd
6 at 9:00. Is that date all right even within the Jewish
7 holiday?

8 MR. HANSEL: Is it 9:00 or 10:00?

9 THE COURT: I'm sorry. 10:00, 10:00, October 3rd,
10 10:00. Got that. Okay.

11 In terms of the next status conference, we will
12 talk about it next time, but I'm thinking probably in
13 February of 2020, so just keep that in mind when you come
14 back so we can look at dates.

15 Is there any other matter? I guess that's it
16 except for our motion. Yes.

17 MR. WEILL: Yes.

18 THE COURT: Mr. Weill.

19 MR. WEILL: Your Honor, Randall Weill with the
20 direct purchaser plaintiffs.

21 THE COURT: Good morning.

22 MR. WEILL: Good morning. Your Honor, I would like
23 to resume a conversation we had last fall related to
24 anti-vibration rubber parts.

25 THE COURT: All right.

1 MR. WEILL: Just to summarize, the direct
2 purchasers were trying to get the defendants who pled guilty
3 to produce the documents they produced to the Department of
4 Justice pursuant to a court order that you issued. Mr. Reiss
5 came up and explained that there was a petition for 1292(b)
6 appeal, and your decision was to wait to see what happened.
7 So that petition -- the ability to submit that petition was
8 granted. It went to the Sixth Circuit, and the Sixth Circuit
9 refused to consider the appeal. So on -- this came up -- all
10 of this sort of came up since the submission of the
11 information for the preparation for the agenda, so my
12 apologies for sort of springing this on the Court.

13 So on May 10th, I wrote to the AVRP defendants and
14 said please produce the DOJ documents within 30 days, and
15 also we would like to discuss your producing to the direct
16 purchasers the discovery that was taken in the case that was
17 pursued by the end payors. There was considerable discovery
18 taken, and we feel that we would like see what that is so we
19 don't replicate discovery. I think that's in the spirit of
20 trying to be efficient here.

21 So most recently we did get an e-mail from
22 Mr. Reiss that says as far as he's concerned, the plaintiffs
23 in this case have settled their claims because he asserts
24 they were part of the settlement of the end payor case,
25 according to his, as I understand it, his assertion that the

1 end payor definition included our plaintiffs, even though you
2 and the Sixth Circuit indirectly have indicated at this stage
3 they are direct purchasers.

4 I understand that yesterday the defendants filed a
5 motion to enforce judgment in the end payor case. I haven't
6 seen it, I am not party to the end payor cases, so I'm not
7 quite sure why that was filed there. But apparently it is
8 directed to -- the effect of it is to say there is no direct
9 purchaser case because as far as we are concerned we have
10 settled the case, our plaintiffs did not object, they are
11 part of the settling class, ergo the judgment affects them.

12 This is a considerable surprise to us. We have had
13 no indication or direction that this negotiation somehow
14 affected our clients. And from our point of view, we don't
15 think it is -- it has the impact on our clients. And given
16 the fact that this case is to proceed, we would like the
17 production of the Department of Justice documents from the
18 guilty-plea defendants in accordance with the Court's order.

19 And we would also like -- we asked for a meet and
20 confer, but I will just say we would like the AVRP defendants
21 to give us all the documents they produced to the end payor
22 plaintiffs, and to the extent there is a problem with access
23 to the 53 depositions that were taken by the end payor
24 plaintiffs and defendants in that case, we would like to see
25 those as well. So we can determine if there is the need for

1 any further discovery so we can proceed with the case.

2 THE COURT: Okay. Let's hear.

3 MR. REISS: Good morning, Your Honor.

4 THE COURT: Good morning, Mr. Reiss.

5 MR. REISS: A little bit of background. So we
6 have -- we being -- and I'm here on behalf of Bridgestone,
7 but I think I'm also speaking on behalf of all of the other
8 three AVRP defendants, so I'm speaking on behalf of the four
9 defendants in the AVRP case.

10 All four of the defendants in the AVRP case have
11 entered into settlements that this Court has approved and
12 issued final judgments, including an injunction, in all four
13 cases for all four defendants that bars any commencement or
14 continuation of litigation by anyone in the end payor class.

15 The end payor class is defined in the Court's order
16 to include anyone who purchased a replacement part from a
17 subsidiary of any of the defendants. So those people are in
18 the class. They are barred by the injunction from proceeding
19 with any litigation.

20 The so-called named direct purchasers in this case,
21 by their own allegations, Your Honor, and by their own
22 admissions in this courtroom, purchased replacement parts
23 from at best a fourth-tier subsidiary, who is not a
24 defendant, and is not an antitrust violator, of one of the
25 named defendants. So at best their three named plaintiffs,

1 Anderson, LaRue and Lee, are purchasers of replacement parts,
2 not from any defendant, not from any subsidiary defendant,
3 not from any subsidiary of any subsidiary of any defendant,
4 but from at best a fourth-tier subsidiary. That, Your Honor,
5 makes them indisputably by their own allegations an indirect
6 purchaser.

7 And if that was not clear enough on the pleadings,
8 the Supreme Court's decision in Apple last week says, "A
9 direct purchaser is someone who purchases directly from the
10 antitrust violator. It is not someone who purchases from
11 a -- from a company that is at least two levels down from the
12 violator."

13 Here, by their own allegations, their three named
14 individual plaintiffs who purchased replacement parts
15 purchased at best from a fourth-tier subsidiary, not from an
16 antitrust violator, not even from a direct subsidiary of an
17 antitrust violator. They are indisputably indirect
18 purchasers of replacement parts. They indisputably did not
19 opt out of any of the EPP settlements, and they are,
20 therefore, Your Honor, barred by the injunction that this
21 Court issued against all members of the indirect purchaser
22 class for all four AVRP defendants.

23 Now, Your Honor, this -- the final settlement with
24 the Court's approval in the AVRP case was not final until
25 December of last year, December 2018. We filed our motion to

1 dismiss the direct purchaser AVRP case on the grounds that
2 they didn't have either constitutional or antitrust standing
3 in April of 2017. This Court ruled on that motion in March
4 of 2018. We immediately filed a motion for interlocutory
5 appeal, which this Court granted in March of 2019, and the
6 Sixth Circuit decided not to take the case.

7 While that litigation was pending, Your Honor, we
8 did not think it appropriate to burden the Court with yet
9 another motion, which would not have been ripe until December
10 of last year, when the final AVRP EPP settlement was
11 approved. But now that it is approved, all four AVRP
12 defendants are entitled to the benefit of that injunction.

13 And, by the way, the four AVRP defendants paid a
14 total of over \$81 million to settle those EPP cases and to
15 get finality. And we got an e-mail a couple weeks ago from
16 the plaintiffs in the supposed direct purchaser case saying
17 we want all of your documents. We said you are part of the
18 EPP class, by definition you are enjoined, you can't proceed.
19 I sent that e-mail last week and said please let us know if
20 you are going to dismiss your case. No response.

21 So, Your Honor, yes, yesterday we filed a motion to
22 enjoin any further activity on the part of the so-called
23 direct purchasers. By the way, I will remind the Court, that
24 these four supposed -- they purport to be direct purchasers,
25 filed this complaint on the last day before the statute of

1 limitations was going to expire, and by their own admissions
2 they used these three plaintiffs, Anderson, LaRue and Lee,
3 because they could not find a real direct purchaser.

4 They are indirect purchasers. They are barred by
5 this Court's injunction. They cannot proceed with the
6 litigation. And we told them that, and when we got no
7 response in a week or more, we did file our motion to enforce
8 the injunction.

9 Now, I know it is premature to argue this. They
10 haven't responded, but I just wanted to give the Court a
11 sense of where we are.

12 THE COURT: Wow, I get the sense. Okay.

13 MR. WEILL: Your Honor, I have to say -- I don't
14 know how to put this --

15 THE COURT: I like you to be prepared, although I
16 see this is a last minute. Although yours will come up --
17 obviously when the Court considers your motion, this answer
18 thing or discovery issue will also come up.

19 MR. REISS: We have moved -- Your Honor, pending
20 disposition of the motion, we moved that the discovery stay
21 in force because arguably they are enjoined and they are
22 clearly enjoined.

23 THE COURT: Okay.

24 MR. WEILL: Your Honor, I would have to say -- let
25 me try to put this delicately. I'm quite surprised by the

1 approach that the defendants have taken since, as I
2 indicated, we had no contact with them regarding this
3 apparent negotiation with the end payor plaintiffs in a way
4 that apparently negotiated our clients out of our case. So
5 this is something of an unusual tactic that I suggest maybe
6 should be looked at more carefully.

7 Also, it is something that we feel that is not
8 appropriate because the Court itself and the Sixth Circuit
9 has already made a ruling at this stage of the proceedings
10 that our plaintiffs are direct purchasers.

11 So for the defendants to say, aha, I will do a
12 settlement with the end payors, I will define these people
13 that we don't like into the end payor class. We will submit
14 this to the Court, and then the Court naturally approved the
15 settlement and the injunction. But then to have the
16 defendants say you can't -- Your Honor, you have issued
17 orders enjoining this process for these plaintiffs to go
18 forward. I suggest, yes, it is a court order, but it was a
19 court order submitted in good faith on part of the end payor
20 plaintiffs and not on the part of the direct purchaser
21 plaintiffs, whose clients we think are entitled to pursue
22 their claims against these defendants.

23 I'm very surprised at this approach the defendants
24 have taken. They have simply ignored what the Court has done
25 so far. They have bypassed the direct purchasers and their

1 counsel with respect to saying you've got no claim. I'm very
2 surprised.

3 MS. SALZMAN: Your Honor, Hollis Salzman for
4 end payors.

5 We are in a bit of an awkward position because we
6 are not -- first of all, I haven't had an opportunity to
7 study the filings that were made last time. We certainly
8 will, and we can respond to the extent we have anything to
9 respond to, but I think just generally from the end payor
10 position, if someone falls within the definition of a class,
11 and they have eligible purchases, they can make a claim and
12 participate in the settlement. And more than that, I'm not
13 sure we would actually have a position.

14 And I think even though the are briefs filed in our
15 case, there may be -- there should be some allotment for the
16 direct purchasers to file their response. Although we -- you
17 know, to the extent we have anything, we will inform the
18 Court.

19 THE COURT: Okay.

20 MR. WEILL: Your Honor, can I just add one thing?

21 MR. REISS: Just -- just -- just --

22 MR. WEILL: Counsel reminds me that the settlement
23 agreement, which I have not read in its entirety, but the
24 settlement agreement with the end payors apparently
25 explicitly excludes direct purchaser plaintiffs from the

1 scope of the settling class.

2 MR. REISS: Your Honor, it excludes direct
3 purchasers, not direct purchaser plaintiffs, and there is a
4 huge difference.

5 THE COURT: Direct purchasers, not direct purchaser
6 plaintiffs.

7 MR. REISS: Your Honor, I just want to be clear
8 because my entire practice career I always operate
9 aboveboard. I just want to be clear about two things. This
10 Court approved the notice to the end payor class as
11 constitutionally adequate. Everyone in the end payor class
12 got this notice. The notion that these three end payors
13 would not have adequate notice is frankly absurd because
14 these three end payors are actually represented by counsel in
15 this litigation. So the notion that they didn't have notice
16 is frankly not credible.

17 Second, Your Honor, and here is the disconnect. I
18 want to be clear, and I know the Court has not looked at any
19 of these papers. They are relying on an exception to the
20 Illinois Brick bar that says -- the Supreme Court decision in
21 Illinois Brick, only direct purchasers can sue under the
22 Sherman Act.

23 There is an exception to that bar for certain
24 indirect purchasers under the ownership and control
25 exception. If they purchase from an -- from a subsidiary

1 that is either owned or controlled by an antitrust violator,
2 they come into an exception for indirect purchasers under
3 Illinois Brick. We claim -- the Sixth Circuit, by the way,
4 has not found that exception to apply in 42 years.

5 But beside that, even if the indirect purchaser
6 exception to Illinois Brick applied, that doesn't make an
7 indirect purchaser a direct purchaser. They are still an
8 indirect purchaser. They are an indirect purchaser that
9 falls under the exception of Illinois Brick. By definition
10 they are an indirect purchaser because otherwise they
11 wouldn't need the exception to Illinois Brick.

12 So I just want to be clear, Your Honor, that the
13 notion that they are not on notice is frankly not right, and
14 I don't want to argue any further, Your Honor.

15 THE COURT: So the Court needs to review its prior
16 order from way back when, when I said they were a direct
17 purchaser; is that what you are saying?

18 MR. REISS: No, Your Honor. All you have ruled is
19 that at the pleading stage they have alleged enough.

20 THE COURT: Oh --

21 MR. REISS: But we now have filed a motion to
22 enforce an injunction saying the injunction clearly covers
23 them.

24 THE COURT: Okay. You know what, I would like to
25 pick a date, set this for oral argument after I have an

1 opportunity to read your motion and plaintiffs have had an
2 opportunity to respond to your motion.

3 MR. REISS: Certainly, Your Honor.

4 THE COURT: I really need to be better informed on
5 this before I rule.

6 MR. REISS: I agree. Thank you, Your Honor.

7 THE COURT: Okay. Let's -- you just filed it. We
8 will set a date for you after I look at the motion --

9 MR. REISS: Thank you, Your Honor.

10 THE COURT: -- and set a scheduling order.

11 Okay. Now I hesitate to ask: Is there anything
12 else?

13 (No response.)

14 THE COURT: No. Okay. Well, I guess that's it.
15 So our next meeting will be --

16 MR. ISSACHAROFF: Sorry, Your Honor. The notice
17 motion?

18 THE COURT: Sure. Come on up. We still have a
19 motion.

20 MR. ISSACHAROFF: Thank you, Your Honor. Lucas
21 Issacharoff on behalf of the end purchaser plaintiffs.

22 So we filed the motion to give notice of the
23 round-four settlements. As of now, that is settlements with
24 14 defendant families for \$165.8 million. But as my
25 co-counsel indicated, we are hoping to file a handful of

1 additional settlements for preliminary approval and fold
2 those into the round-four notice as well.

3 THE COURT: Okay. But before we get into the
4 round-four notice and the distribution, if anybody wants to
5 leave who is not involved, feel free to do so. Okay. Go
6 ahead.

7 MR. ISSACHAROFF: Thank you, Your Honor. So the
8 round-four notice program is fairly similar to the prior
9 notice régimes that were approved by this Court. There are,
10 I think, four significant changes that were adopted in
11 consultation with our --

12 THE COURT: We received a letter on them today.

13 MR. ISSACHAROFF: I'm sorry. Those are minor
14 changes to the papers submitted, but I'm referring to
15 comparing the round-four versus the prior rounds of notice.

16 THE COURT: Yes, I understand.

17 MR. ISSACHAROFF: So we consulted with our
18 class-notice experts and determined to make four changes, and
19 I can sort of work my way up in significance.

20 So one is, as Your Honor has commented or suggested
21 in the past, we've allocated funds for additional media
22 outreach, e-mail notification, essentially more extensive
23 outreach designed not simply to provide the bare notice
24 required by Rule 23, but to avoid additional notice that we
25 anticipate will stimulate claims activity. That includes

1 additional online and television advertising, outreach to
2 drive-earned media coverage and renting certain e-mail lists
3 for potential class members.

4 THE COURT: I have a question about that notice as
5 it relates to younger people, as has just been brought up to
6 me. I guess they don't read papers and they don't watch
7 television, and Facebook is kind of out. So where do they
8 go? Because I think we need to reach them. These are the
9 younger ones who may benefit more from their claim filing
10 than anybody else.

11 MR. ISSACHAROFF: Your Honor, I guess I'm
12 fortuitously qualified to speak on behalf of my generation.

13 THE COURT: You are.

14 MR. ISSACHAROFF: So we -- as is detailed in the
15 declaration of Dr. Whetmen, we do believe that some of the
16 social media and internet advertising will target younger
17 generations, but my generation is also not known for
18 purchasing cars necessarily so that we do --

19 THE COURT: I didn't give that a thought. You are
20 more of the Lyft and Uber generation.

21 MR. ISSACHAROFF: Right. So we think we have
22 adequately mapped the media coverage that we purchased to the
23 likely demographic profile of the class settlement members.
24 This round covers purchases going as far back as 1990 in one
25 of the cases and up to 2019. And so, you know, some of the

1 generation who have stopped using Facebook were not born by
2 that point. So we do think that the notice program we have
3 mapped out, which includes more extensive online advertising
4 than the prior rounds will --

5 THE COURT: I really am being very serious. To
6 reach this group, and reading what was said here as to what
7 they did, I still wasn't quite sure what was the technique to
8 reach this group. And is it -- is it acknowledged that they
9 will reach this particular group by whatever means they are
10 going to use?

11 MR. ISSACHAROFF: Yes, Your Honor. If you -- if
12 you look at program components on page 3 of Exhibit A to the
13 Whetmen declaration.

14 THE COURT: Let me look at that. Exhibit A,
15 page 3. I'm at the table of contents. Is that -- is it
16 under paid media?

17 MR. ISSACHAROFF: It is actually under the program
18 components, which begins on page 2. You will see references
19 under both phase 1 and phase 2 to internet banner ads and
20 targeted internet advertising, and then under the earned
21 media phase to keyword search advertising.

22 And then as for the detail -- sorry to have you
23 turn back to page 21 of the Whetmen declaration, it discusses
24 banner ads that will appear on, in addition to Facebook, but
25 Huffington Post, TechCrunch, Engadget, a number of other

1 websites that are properties of the Verizon Media Group. And
2 we also think that the earned media component will drive -- I
3 hate to use the term viral coverage, but it is intended to
4 drive sort of organic media coverage that we think will
5 filter out into social media and drive general awareness of
6 the fact that there is a large settlement fund that is
7 available for claimants.

8 THE COURT: Okay. So you believe and Kinsella
9 believes that they have used the best means to target all of
10 the demographics?

11 MR. ISSACHAROFF: We do, Your Honor.

12 THE COURT: Okay.

13 MR. ISSACHAROFF: So I think the second change from
14 the prior notice régimes is that we have submitted as Exhibit
15 D to the Whetmen declaration a revised claim form, and there
16 are certain -- we have reduced the upfront document
17 requirements.

18 THE COURT: I wanted to ask you about that too.

19 MR. ISSACHAROFF: Yes.

20 THE COURT: I note on the claims form in Exhibit D
21 it says basically don't worry, you don't need your VIN number
22 right now. It says you can submit a claim even if you don't
23 know your VIN.

24 What is the end result? What is the verification
25 they have to have that they had a vehicle?

1 MR. ISSACHAROFF: So the end result is I think the
2 claims administrator will review the claims that are
3 submitted and will devise a verification program as
4 appropriate. I think that one mechanism might be for people
5 with a certain number of claims, there will be more steps
6 required. There will be outreach and verification required.
7 There might be some sort of random auditing to ensure that
8 there are not a lot of spurious claims being filed.

9 THE COURT: How do you do that? Most people don't
10 keep records. This is 20 years we are talking about of
11 vehicles. One would assume that probably a majority of
12 people don't have records past -- let's just say ten years;
13 they throw away everything. How do they verify that? Are
14 they going to be required to go -- I don't know, does the
15 Secretary of State keep these records or --

16 MR. ISSACHAROFF: I'm not familiar with the precise
17 verification procedures, but I do know that --

18 MS. SALZMAN: So typically in these cases, Your
19 Honor, especially when you have such a broad number of
20 consumers, like you said, who would not keep all of the
21 information on older vehicles, we don't want to -- we want to
22 encourage filings, and so we are not requiring the
23 information. However, what the claims administrators do in
24 these cases is they have algorithms they run. They can see
25 where there might be purchasers that look like they are

1 fraudulent. In other words, an individual filing a large
2 number of claims. There are various things that sort of set
3 off an alarm for them, and it will be those claims that they
4 do a deeper dive to ask for additional information. But the
5 typical consumer who files for one or two cars will not be
6 deterred from filing because they don't have this VIN
7 number that -- I mean, I certainly don't keep it for any of
8 my cars that I've owned.

9 THE COURT: But then what about -- maybe it was the
10 old claims forms, they asked for purchase agreements?

11 MS. SALZMAN: What we did was we originally wanted
12 some measure of agreement, but in speaking and consulting
13 with the claims administrator and seeing what was done in
14 other cases, we are not going to require this information.
15 And so with this round we are setting the claims deadline
16 which encourages filing; typically without a claims deadline
17 you don't get class members or an abundance of class members
18 to file. In lieu of their case experience and our case
19 experience, we've determined that this is the best way to
20 encourage filings while still making sure that there is no
21 fraud on the system.

22 Will one or two fraudulent slip through? Of
23 course, and that's probably true under any scenario. But I
24 think based on their experience, they will do a pretty good
25 job and they know what to flag and what to look for. In

1 fact, they have a database of individuals that, you know, in
2 their history of claims administration have been flagged as
3 abusers of the system, and so they -- there's lots of bells
4 and whistles --

5 THE COURT: A database of abusers of claims?

6 MS. SALZMAN: Yes, believe it or not. Some people
7 really want to file a claim.

8 THE COURT: And I think the additional change here
9 is that \$100 per --

10 MR. ISSACHAROFF: Yes. So as my colleague
11 mentioned, one of the -- the third significant change is the
12 addition of the claims deadline, which in our experience and
13 in our class-notice expert's experience, will stimulate a
14 large number of additional claims and allows us to begin
15 processing.

16 And then the final is the change to the plan of
17 allocation to add the \$100 minimum payments.

18 THE COURT: How many claims have been filed
19 already?

20 MR. ISSACHAROFF: As of now, Your Honor, there are
21 roughly 58,000 claims for 3.7 million vehicles. There are
22 also an additional 51,000 registrations on the website, some
23 of which may overlap with those claims on file.

24 THE COURT: If you -- never mind. I'm not going
25 ask the question. All right. Thank you.

1 MR. ISSACHAROFF: Thank you, Your Honor.

2 THE COURT: All righty. The Court --

3 MR. ISSACHAROFF: Sorry, Your Honor. As was
4 mentioned in the papers, in order to adhere to the current
5 schedule that's set out in our papers, we will need to have
6 approval of the notice plan and any of the settlements to be
7 included within the notice plan by June 30th. I wanted to
8 flag that for the Court. Otherwise we will have to push all
9 of the dates back to some degree.

10 THE COURT: I have reviewed the dates, and there's
11 no reason I can't get this done now except for including all
12 of the settlements.

13 MR. ISSACHAROFF: Yes, Your Honor.

14 THE COURT: I understand we have to get a few more
15 in there, but once that's done and you submit the final
16 notice to me, if you can do that by the end of June, the
17 Court will have it entered because I have reviewed the notice
18 in detail.

19 MR. ISSACHAROFF: Thank you, Your Honor.

20 MR. HANSEL: Your Honor, Greg Hansel, for direct
21 purchasers.

22 I'm reminded by the last comment that we
23 respectfully ask if the Court could enter the order on the
24 notice motions, which are the four orders that we are
25 submitting today with the October 3rd deadline, by the end of

1 this week, if possible, to keep the time frame working.

2 THE COURT: I will do that today.

3 MR. HANSEL: Thank you, Your Honor.

4 THE COURT: Okay. All right. Is there anything
5 else on this notice? Anybody have any comment or any problem
6 with dates in there?

7 (No response.)

8 THE COURT: All right. I think that's it. Does
9 anybody have anything else before we break?

10 (No response.)

11 THE COURT: All right. Thank you very much. Have
12 a good summer. Keep working.

13 THE LAW CLERK: All rise. Court is adjourned.

14 (Proceedings concluded at 10:54 a.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of In Re: Automotive Parts Antitrust Litigation, Case No. 12-02311, on Wednesday, June 5, 2019.

s/Robert L. Smith

Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 07/01/2019

Detroit, Michigan